



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, IL 60610

COPY MAILED

SEP 26 2005

OFFICE OF PETITIONS

In re Patent No. 6,875,952	:
Sakai et al.	:
Issue Date: April 5, 2005	:
Application No. 09/748,530	:
Filed: December 22, 2000	:
Attorney Docket No. 9281/3898	:
	: LETTER REGARDING PATENT
	: TERM ADJUSTMENT AND
	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the "Request for Reconsideration of the Patent Term Adjustment Under 37 C.F.R. § 1.705(d)" received in the Office on May 26, 2005. This paper is properly treated as a letter filed pursuant to applicants' duty of candor and good faith to the Office. Patentees request recalculation of the Patent Term Adjustment in the above-identified application. Patentees request that the patent term adjustment indicated on the patent be corrected from three hundred twelve **(312)** to one hundred ninety-one **(191)** days.

The request for reconsideration of the patent term adjustment (PTA) indicated on the patent is **GRANTED to the extent herein indicated.**

The patent term adjustment indicated on the patent is to be corrected by issuance of a Certificate of Correction showing a revised Patent Term Adjustment of one hundred sixty-one **(161)** days.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136(a).

On March 16, 2005, the Office mailed an Issue Notification with a published term adjustment under 35 U.S.C. § 154(b) of 312 days. A review of the application history reveals that as of the mailing of the Issue Notification, the accordance of 312 days of Patent Term Adjustment is not correct.

The Office Action mailed July 31, 2002 was a final rejection. As the amendment filed December 2, 2002 was not in compliance with § 1.113(c), the period for reply to the final rejection continued to run. (See Advisory Action mailed December 30, 2002). The proper reply, a Request for Continued Examination (RCE), was not received in the Office until January 30, 2003. Pursuant to § 1.704(b), the patent term adjustment should have been reduced

by ninety-one **(91)** days, not thirty-two **(32)** days, for applicant delay from November 1, 2002 until January 30, 2003.

Furthermore, a reduction of 92 days should have been entered pursuant to 37 C.F.R. § 1.704(b) for delay from May 22, 2003 until August 21, 2003. A Final Rejection was mailed to the Patentees on February 21, 2003. Patentees response was not received until August 21, 2003. Pursuant to 37 C.F.R. § 1.704(b), the period of adjustment shall be reduced by the number of days beginning on the day after the date that is three months after the date of mailing of the Office communication.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is 19 days + 325 days - 91 days - 92 days = **161** days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks Patentees for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred sixty-one **(161)** days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction